

1 Hon. Richard A. Jones  
2 Hon. J. Richard Creatura  
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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 El PAPEL LLC, *et al.*, )  
8 vs. ) Plaintiffs, ) No. 2:20-cv-01323-RAJ-JRC  
9 JENNY A. DURKAN, *et al.*, ) ) DEFENDANT CITY OF SEATTLE'S  
10 Defendants. ) ) OBJECTIONS TO REPORT AND  
11 ) ) RECOMMENDATION (RE-FILING)  
12 ) ) NOTE ON MOTION CALENDAR:  
13 ) ) October 15, 2021  
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The City previously filed these objections on September 28, 2021, but in an abundance of caution is re-filing them to establish a noting date consistent with the noting date for the other parties' objections.

While hesitating to cast them as "objections," Defendant City of Seattle notes three opportunities in the Report and Recommendation, Dkt. # 141 ("Report"), to more accurately convey the City measures Plaintiffs challenge.<sup>1</sup>

With respect to the repayment plan requirement, the Report refers (in one place) to late fees or interest on unpaid rent accrued during "or six months after" the civil emergency. Dkt. # 141, p. 27, line 9. The reference to "six months after" should say "one year after." See Dkt. # 17-12, p. 9. *Accord* Dkt. # 141, p. 9, line 4 (correctly referencing the one-year period).

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<sup>1</sup> The City also agrees with and adopts the second objection raised in Defendant Robert W. Ferguson's objections. Dkt. # 144, p. 2, lines 5-10.

1       With respect to the six-month defense, the Report indicates the defense allows eviction  
 2 for “something other than financial hardship caused by COVID-19.” Dkt. # 141, p. 30, line 9.  
 3 The reference should simply be to “something other than financial hardship,” because the six-  
 4 month defense does not require that the financial hardship be caused by COVID-19. *See* Dkt.  
 5 # 17-11, p. 20. *Accord* Dkt. # 141, p. 8, lines 19-20 (correctly stating that “[a] tenant may invoke  
 6 the six month defense only by self-certifying financial hardship preventing payment of rent”).

7       Finally, the Report states: “Here, the Court assumes that the State’s restriction  
 8 substantially impaired the contractual relationship.” Dkt. # 141, p. 14, lines 6-7. The Report then  
 9 states in footnote 10: “Therefore, the Court does not address the parties’ arguments regarding  
 10 whether the *leases* are a substantial impairment to contracts. *E.g.*, Dkt. 93, at 13–18.” Dkt.  
 11 # 141, p. 14, n.10 (emphasis added). The City believes the Report meant to say “eviction  
 12 restrictions” rather than “leases” there. *See id.*, p. 2, n.1 (“the Court will collectively refer to all  
 13 measures as ‘eviction restrictions’”). That belief is buttressed by the fact that footnote 10 of the  
 14 Report cites the passage from Plaintiffs’ brief containing Plaintiffs’ arguments for why all the  
 15 measures (one State and three City) substantially impair contracts.

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1 Respectfully submitted September 30, 2021.

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3 PETER S. HOLMES  
Seattle City Attorney

4 By: /s/ *Jeffrey S. Weber*, WSBA #24496  
/s/ *Roger D. Wynne*, WSBA #23399  
/s/ *Derrick De Vera*, WSBA #49954  
/s/ *Erica R. Franklin*, WSBA #43477

5  
6 Seattle City Attorney's Office  
701 Fifth Ave., Suite 2050

7 Seattle, WA 98104-7095

8 Ph: (206) 684-8200

9 [jeff.weber@seattle.gov](mailto:jeff.weber@seattle.gov)

10 [roger.wynne@seattle.gov](mailto:roger.wynne@seattle.gov)

11 [erica.franklin@seattle.gov](mailto:erica.franklin@seattle.gov)

[derrick.devera@seattle.gov](mailto:derrick.devera@seattle.gov)

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13 Assistant City Attorneys for Defendants City of  
14 Seattle and Jenny A. Durkan, in her official capacity  
15 as the Mayor of the City of Seattle